

ESTTA Tracking number: **ESTTA282556**Filing date: **05/07/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

|         |  |             |                |
|---------|--|-------------|----------------|
| Name    | Armadillo Scooter Wear Ltd.  |             |                |
| Entity  | Corporation  | Citizenship | United Kingdom |
| Address | Upton House, Badcock St. Royston<br>Hertfordshire, SG8 5AY<br>UNITED KINGDOM |             |                |

|                      |  |
|----------------------|--|
| Attorney information | Jeffrey H. Greger<br>Lowe Hauptman Ham & Berner LLP<br>1700 Diagonal Rd Suite 300<br>Alexandria, VA 22314<br>UNITED STATES<br>jhgreger@ipfirm.com Phone:703-684-1111 |
|----------------------|--|

**Registration Subject to Cancellation**

|                 |   |                   |            |
|-----------------|---|-------------------|------------|
| Registration No | 2782780   | Registration date | 11/11/2003 |
| Registrant      | ARMADILLO PRODUCTS LTD<br>18 Newton Tony, Salisbury<br>Wiltshire SP4 0HA,<br>UNITED KINGDOM |                   |            |

**Goods/Services Subject to Cancellation**

Class 018. First Use: 1996/02/28 First Use In Commerce: 1996/10/31

All goods and services in the class are cancelled, namely: trunks; travelling bags; walking sticks; whips; harnesses; numnahs; saddlery; pads for horse saddles; equine leg wraps; boots for animals

**Grounds for Cancellation**

|   |   |
|---|---|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Abandonment                                     | Trademark Act section 14                    |

|             |  |
|-------------|--|
| Attachments | Pet to Cancel.pdf ( 7 pages )(198603 bytes ) |
|-------------|--|

**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

|           |                   |
|-----------|-------------------|
| Signature | /jeffreyhgreger/  |
| Name      | Jeffrey H. Greger |

|      |            |
|------|------------|
| Date | 05/07/2009 |
|------|------------|

Cancellation Petition

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Registration No. 2,782,780



Mark:

Registration Date: November 11, 2003

|                              |   |                         |
|------------------------------|---|-------------------------|
| Armadillo Scooter Wear Ltd., | ) |                         |
|                              | ) |                         |
| Petitioner,                  | ) |                         |
|                              | ) |                         |
| v.                           | ) | Cancellation No.: _____ |
|                              | ) |                         |
| Armadillo Products Ltd.      | ) |                         |
|                              | ) |                         |
|                              | ) |                         |
| Registrant                   | ) |                         |
|                              | ) |                         |

**PETITION TO CANCEL REGISTRATION**

COMES NOW Petitioner, Armadillo Scooter Wear Ltd., a legal business entity formed under the laws of the United Kingdom, with a principal place of business located at Upton House, Badcock Street, Royston, Hertfordshire, SG8 5AY, United Kingdom, believing that it

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is being damaged by Registration No. 2,782,780, hereby petitions to cancel same on the following grounds.

### Facts Common to All Counts

1. Petitioner is the owner of a pending U.S. application under serial number 79/053,364

seeking coverage for the mark

The logo for "armadillo" is written in a bold, lowercase, sans-serif font. To the right of the word is a circular icon containing a stylized armadillo head. Below the word "armadillo" and the icon, the words "SCOOTER WEAR" are written in a smaller, uppercase, sans-serif font.

2. Serial Number 79/053,364 currently covers the following list of goods and services:

Bags for transportation scooter riding, namely back packs, garment bags for travel, knapsacks, rucksacks, haversacks, packs in the nature of rucksacks for carrying on the back; frames adapted for holding all the aforesaid goods, namely backpack frames, holdalls, travel bags, wallets and purses; and all the aforementioned goods designed for suitability for transportation scooter riding in Class 18; and

Clothing, namely outdoor clothing, namely coats, jackets, vests, parkas, raingear, anoraks, trousers; gloves; headwear, namely hats, caps, head bands and balaclavas, excluding footwear, and all the aforementioned goods designed for suitability for transportation scooter riding, in Class 25.

3. The Trademark Office Examining Attorney handling the examination of the '364 application has refused approval for publication with respect to the '364 application alleging a likelihood of confusion existing based on U.S. Registration Number 2,782,780.

4. Registration Number 2782780 covers the mark Armadillo and Design and coverage is listed for Class 18 goods, namely "*trunks; travelling bags; walking sticks;*

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*whips; harnesses; numnahs; saddlery; pads for horse saddles; equine leg wraps; boots for animals*

5. On information and belief the Registrant of Registration Number 2782780 is Armadillo Products Ltd a business with an address of 18 Newton Toney, Salisbury Wiltshire SP4 0HA, United Kingdom.
6. On information and belief Registrant Armadillo Products Ltd is an organization formed under the laws of the United Kingdom. On information and belief Armadillo Products Ltd, remains the current owner of Registration Number 2782780, which is also referred to as “the 780 registration.”
7. The owner of the ‘780 registration asserted first use of the mark as registered at least as early in U.S. commerce as of October 31, 1996 on goods named in the application and registration as matured..
8. On information and belief the Registrant did not commence use of the mark registered on all the goods it registered as early as the date it declared in the application in support of the registration which matured into the ‘780 registration.
9. The U.S. Patent and Trademark Office (USPTO) relied on the declaration in support of the application which matured into the ‘780 registration.
10. On information and belief the Registrant has not commenced use of the mark it registered on all the goods covered by the registration as it declared during the prosecution of the application that mature into the ‘780 registration.
11. The USPTO is currently refusing to approve the Petitioner’s ‘364 application in view of the appearance of the ‘780 registration being maintained on the Principal Register.

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12. Petitioner is being harmed by the existence of the '780 registration due to the substantive and Final refusal to approve the Petitioner's '364 application substantively due to the existence and appearance of validity of the '780 registration.
13. Petitioner has argued during prosecution of its '364 application that a likelihood of confusion is not presented in view of the differences but the Examining Attorney has disagreed and made Final a refusal to approve the '364 application.
14. If the Trademark Examining Attorney is legally correct then the existence and maintenance of the '780 registration stands in the way of maturation of the '364 application and the continued existence of the '780 registration provides certain rights which are detrimental to the Petitioner's business plans and intended use of its mark in U.S. commerce.

### **COUNT I – ABANDONMENT - 15 U.S.C. §1064(3)**

15. All prior allegations are incorporated herein by reference.
16. On information and belief Registrant has not continuously used the mark as registered on all the goods as listed in the '780 registration.
17. On information and belief Registrant has not used the mark as registered in commerce on trunks, traveling bags, walking sticks, whips, harnesses, numnahs, and saddlery.
18. On information and belief the mark appearing in the '780 is not being commercialized on all the goods as registered.

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19. On information and belief the mark as appearing in the '780 registration is not being used in the ordinary course of business in U.S. commerce on all the goods as listed in the '780 registration.
20. On information and belief the mark appearing in the '780 registration has been legally abandoned with respect to some or all of the goods listed in the '780 registration.

### **COUNT II – FRAUD 15 U.S.C. §1064(3)**

21. All prior allegations are incorporated herein by reference
22. On information and belief the Registrant committed fraud against the United States Patent and Trademark Office when declaring in its July 9, 2003 Statement of Use in support of registration that it commenced use of the mark as applied for all the goods listed in the application which matured into the '780 registration when in fact the applicant knew or should have know that the statement was false.
23. On information and belief no use of the mark appearing in the '780 registration occurred in interstate commerce or otherwise in the ordinary course of business on all the goods in the application which matured into the '780 registration.
24. On information and belief the Trademark Office rules and Trademark Office current legal precedent holds declarants making use allegations to a high standard including actual knowledge and/or “should have known” with respect to use dates alleged in applications in support of specimens and use allegations filed with the

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U.S. Patent and Trademark Office and that erroneous allegations based on these standards establish a fraud on the USPTO under the instant fact pattern.

Wherefore, Petitioner believes that it will be damaged by the continued existence and the perceived validity of Registration No. 2,782,780 and prays that this Petition for Cancellation be sustained in favor of the Petitioner; that judgment be entered against the Registrant; and that the U.S Trademark Registration No. 2,782,780 be canceled.

Petitioner submits the applicable filing fee of \$300.00 with this Petition.

Respectfully submitted,  
LOWE HAUPTMAN HAM & BERNER, LLP

A handwritten signature in black ink, appearing to read "Jeffrey H. Greger", with a stylized flourish at the end.

Jeffrey H. Greger  
Attorney for Petitioner

1700 Diagonal Road, Suite 310  
Alexandria, Virginia 22314  
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May 7, 2009

**Certificate of Service**



Cancellation Petition

I hereby certify that a copy of the foregoing PETITION TO CANCEL has been forwarded to Registrant's currently listed correspondence address and contact information and the currently listed attorney of record according to the current records as contained in the U.S. Patent and Trademark Office records as appears below, by prepaid United States mail this 7th day of May 2009.

Alfred A. Fressola  
Robert H. Ware  
WARE, FRESSOLA, VAN DER SLUYS ET AL  
BUILDING 5  
755 MAIN STREET  
MONROE, CONNECTICUT 06468-0224

Dated: May 7, 2009

Jeffrey H. Greger